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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: BCS - 174616

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**PRELIMINARY RECITALS**

On May 25, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5)(a), to challenge a decision by the Washington County Department of Social Services regarding Medical Assistance (MA). The hearing was held on June 23, 2016, by telephone.

The issue for determination is whether the Washington County Department of Social Services (the agency) correctly ended the Petitioner's BadgerCare+ benefits, effective June 1, 2016.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED], Economic Support Lead Worker  
Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**  
Mayumi Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. In mid-April 2016, the Petitioner began receiving unemployment benefits in the amount of \$370.00 per week. (Exhibit 4)
3. On May 14, 2016, information about the Petitioner's unemployment benefits auto populated into the Petitioner's case. (Case Comments – Exhibit 3)
4. On May 16, 2016, the agency sent the Petitioner a notice, advising him that his BadgerCare+ benefits would be ending effective June 1, 2016, although his son's benefits would continue. (Exhibit 5)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 25, 2016. (Exhibit 1)
6. Petitioner's household consists of two people, the Petitioner and his son. (Testimony of Petitioner)

### **DISCUSSION**

BadgerCare Plus (BC+) is a state/federal program that provides health coverage for Wisconsin families. *BadgerCare + Eligibility Handbook (BEH) §1.1.1.*<sup>1</sup>

In order for an adult to be eligible for BadgerCare+, household income must be below 100% the Federal Poverty Level, and all taxable income is counted. *BEH §16.1* 100% of FPL for a household of two is currently \$1335 per month. *BEH §50.1*

Under the applicable MAGI rules, children under 19 years of age must have income below 306% of FPL, which for a household of two is \$4085.10. *BEH §§16.1 and 50.1*

In determining eligibility for BadgerCare+ under the newer "MAGI" rules, certain deductions from income are allowed:

#### **16.3.2 Pre-Tax Deductions**

Under MAGI rules, pre-tax deductions will be allowed if the payments are taken out of the individual's paycheck on a pre-tax basis. Examples include but are not limited to:

1. Health Insurance premium payments, including pre-tax premium payments for medical, dental or vision plans
2. Health Savings Account (including flexible spending accounts) contributions
3. Retirement contributions
4. Parking & Transit costs
5. Child Care Savings Account contributions
6. Group Life Insurance premium payments

#### **16.3.3 Tax Deductions**

Under MAGI rules, monthly expenses related to the following tax deductions from page one of the IRS Form 1040 will be allowed as income deductions for the current year, even if the individual does not plan on filing taxes. If the expense is not incurred on a monthly basis, it will be prorated and counted as a monthly expense.

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<sup>1</sup> The BadgerCare+ Eligibility Handbook may be viewed on-line at:

<http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>

Most of these deductions are not common, and they do not include itemized tax deductions, like charitable contributions or mortgage interest.

In addition, a few deductions have caps, as noted in detail below. If an individual reports and verifies a monthly expense that is more than the monthly cap, the deduction will be the amount of the cap.

1. **Student Loan Interest** Interest on a loan taken to pay for school expenses for the following persons at the time the loan was taken out:

- His or her spouse;
- His or her child under age 19; or
- His or her child under age 24 who was a student, lived with the individual for more than half a year, did not provide more than half of his or her own support for that year, and did not earn more than \$3,900 during that year.

Do not count interest on a loan used for anything besides paying for education or if a relative or employer gave the loan.

This deduction is capped at a monthly amount of \$208.

2. **Higher Education Expenses** Includes tuition and amounts paid for books or fees, but only if those amounts are required to be paid to the institution as a condition of enrollment or attendance. This deduction may not be claimed for expenses that were paid with tax-free educational assistance. Grants and scholarships used for tuition and fees are generally non-taxable, therefore this deduction cannot be claimed for the portion of tuition and fees that were paid for with grants and scholarships. This is capped at a monthly amount of \$333.
3. **Self-employment Tax Deduction** Applies to individuals who are self-employed, who owe self-employment tax, and who are able to deduct a portion of the self-employment tax they pay. Only deduct the portion that the person can deduct on their tax return (as calculated on Schedule SE), not the entire amount of self-employment tax that is paid.
4. **Spousal Support, Alimony or Maintenance** The amount paid for court ordered spousal support, alimony or maintenance or payments under Section 71 for a current or prior spouse as a result of a legal separation or divorce. Do not deduct more than the court ordered amount. Do not allow any deduction if the court order designates the payments as being non-taxable.
5. **Teachers' Tax-Deductible Expenses** Applies to K-12 teachers who have up to \$250 in out-of-pocket work expenses (expenses not paid for by the employer). This is capped at a monthly amount of \$21.
6. **Self-employed SEP, Simple or Qualified Plan Contributions** Examples of these plans include:
7.
  - Simplified Employee Pension (SEP) Plan
  - Savings Incentive Match Plan For Employees (SIMPLE)
  - Qualified Plan Contributions
8. **Penalties for Early Withdrawal of Funds** Penalties to a bank or financial institution for withdrawing funds early from a savings account where money must be left in the account for a fixed period of time, such as a time saving account, certificate of deposit (CD) or an annuity.

9. **Performing Artists Tax-deductible Expenses** Applies to performing artists who have out-of-pocket business expenses not paid by the employer and meet the following criteria:
  - Worked for at least two employers who each paid at least \$200;
  - Did not earn more than \$16,000 for his or her work in the current year; and
  - Out-of-pocket expenses were more than 10% of his or her earnings.
10. **Military Reserve Members' Tax-deductible Expenses** Applies to travel expenses for members of the Armed Forces Reserve who travel more than 100 miles away from home to perform work for the Armed Forces Reserve.
11. **Out-of-pocket Costs for a Job-related Move** Applies to individuals who paid out-of-pocket expenses for a job-related move and meets the following criteria:
  - The move must be for a job-related reason, such as starting a new job, and
  - The new job must be at least 50 miles farther from the individual's old home than the old home was from the individual's old job or must be at least 50 miles from the old home if the individual did not have a job before.
12. **Loss from Sale of Business Property** Applies to self-employed individuals that had a loss from the sale or exchange of property that they owned for their business.
13. **Individual Retirement Account (IRA) Contributions** Applies to individuals who had income from a job and made contributions to an individual retirement account (IRA). Also applies to self-employed individuals who made contributions to an IRA they set up themselves.
14. **Fee-based Official Tax-deductible Expenses** Applies to individuals who are fee-based officials and have out-of-pocket business expenses. Examples of fee-based officials include chaplains, county commissioners, judges, justices of the peace, sheriffs, constables, registrars of deeds or building inspectors.
15. **Domestic Production Activities Deduction** Applies to self-employed individuals who led the production of things like property, electricity, natural gas, or potable water, as long as these things were produced in the United States. This also applies to individuals who invented or created software, recordings, or films in the United States.

**Note:** This deduction is not common.

16. **Allowable Write-in Expenses** These deductions include:
  - Contributions to Archer MSAs
  - Deductions attributable to rents and royalties
  - Certain deductions of life tenants and income beneficiaries of property
  - Jury duty pay given to the employer because the juror was paid a salary during duty
  - Reforestation expenses
  - Costs involving discrimination suits
  - Attorney fees relating to awards to whistleblowers
  - Contributions to section 501(c)(18)(D) pension plans.
  - Contributions by certain chaplains to section 403(b) plans

*BEH §16.3*

At the time in question, the Petitioner's sole source of income came from unemployment benefits in the amount of \$370 per month.

For BadgerCare+ purposes, only actual gross monthly income is used. Estimated amounts using the 4.3 weekly pay period or 2.15 bi-weekly pay period multipliers are NOT used. *Process Help §16.4.1*; see also *Ops Memo 01-01*

So, Petitioner's monthly unemployment income works out as follows: \$370 x 4 weeks per month = \$1480. According to Petitioner's testimony, none of the deductions list above are applicable to his case. Thus, his MAGI income is \$1480.

Petitioner's income of \$1480 was over the \$1335 / 100% FPL income limit. As such, he was not eligible for BadgerCare+ benefits.

The Petitioner should note that since he is only \$145 over the income limit, it is possible he will be determined ineligible for assistance on the Marketplace, since the Marketplace calculates income differently than the BadgerCare+ program does. If that happens, he would be eligible for Gap Coverage under *BEH §16.1.4*.

The Petitioner can apply for Marketplace assistance at <https://www.healthcare.gov/> or he can call 1-800-318-2596.

The Petitioner indicated that he has since stopped filing for unemployment benefits. This is a change that must be reported to the agency, so that the agency can re-determine the Petitioner's eligibility.

I note to the agency that under MAGI rules, availability of income does not affect whether income is counted. Under Federal Regulations, 42 CFR §435.603(d) and (e), only taxable income is counted. There are no provisions in 42 CFR §435.603 that require the agency to count unemployment benefits, if the applicant does not file for and does not receive those benefits.

### **CONCLUSIONS OF LAW**

The agency correctly ended the Petitioner's BadgerCare+ benefits effective June 1, 2016.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

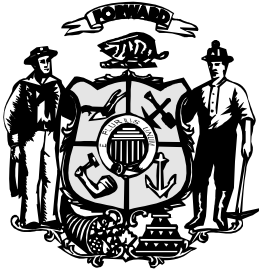
### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of July, 2016

\s \_\_\_\_\_  
Mayumi Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 18, 2016.

Washington County Department of Social Services  
Division of Health Care Access and Accountability